

May 13, 2008

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Vermont Telephone Company, Inc.
Notice of *Ex Parte* Presentation
WC Docket No. 08-56**

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this letter provides notice that on, May 12, 2008, Michel Guite, President of Vermont Telephone Company, Inc. ("VTel"), and the undersigned, met with Chairman Kevin J. Martin, and his Acting Legal Advisor for Wireline Issues, Amy Bender. Separately, the participants met with Commissioner Jonathan S. Adelstein and his Legal Advisors, Scott Bergmann and Rudy Brioché; John Hunter, Special Counsel to Commissioner Robert M. McDowell; Scott Deutchman, Legal Advisor to Commissioner Michael J. Copps; and Chris Moore, Legal Advisor to Commissioner Deborah Taylor Tate.

During the meetings, VTel explained the factual circumstances and public policy concerns that prompted VTel to file its Petition for Declaratory Ruling Regarding VoIP Interconnection, which resulted in the commencement of the above-referenced proceeding. The parties discussed VTel's request for clarification as to whether Comcast's service to its VoIP end users is subject to telecommunications regulations and, more specifically, whether VTel should enter into a commercial agreement or a Section 251 agreement for a direct interconnection with VoIP providers like Comcast. VTel emphasized that competition in rural Vermont must be fair in order to preserve high-quality, affordable telephone service, and that the public interest is similarly served by fair competition in the provision of wireless and video services. The attached document was distributed at the meetings.

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An electronic copy of this letter and the handout given at the meeting is being filed via ECFS for inclusion in the above-referenced docket. Please direct any questions regarding this filing to the undersigned.

Sincerely yours,

/s/ electronically submitted

James U. Troup

Counsel to Vermont Telephone Company, Inc.

Attachment

cc (by email):

Chairman Kevin J. Martin
Commissioner Jonathan S. Adelstein
Amy Bender
Scott Bergmann
Rudy Brioché
Scott M. Deutchman
John W. Hunter
Chris Moore

**Vermont Telephone Company
Petition for Declaratory Ruling Regarding VOIP Interconnection
WC Docket No. 08-56**

**May 12, 2008 Meeting
Handout**

VTel Meeting Participants:

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I. Vermont Telephone Company ("VTel")

- **We are an independent, family owned LEC serving southern Vermont:**
 - Our rural service area covers 14 towns and villages;
 - We provide local exchange and high-speed broadband services to 21,000 telephone lines, proudly serving approximately 40,000 Vermonters;
- **We have invested in world-class technology to deliver broadband services to our customers:**
 - Over \$50 million invested in our network since buying from GTE in 1994;
 - Our fiber network delivers GigE Internet to largest Vermont high schools, Vermont DOE, Dartmouth College, etc;
 - Highest DSL penetration in North America for over 10 years, near 50%, with speeds to 24 Meg ,at \$29.95/month;
 - First in Vermont with fiber-to-home, GigE and DWDM.
- **We fully support FCC and Vermont policies that enhance competition in the provision of voice, video, and data and other advanced services**
 - VTel plans include video service and WiMAX
 - VTel has obtained 700 MHz licenses;

- We also have acquired Broadband Radio Service (BRS) licenses for \$4.5 million from WCTI through the bankruptcy court. VTel is waiting for the FCC to reinstate the WCTI licenses so these may then be assigned to VTel and Clearwire.

II. Comcast Phone of Vermont (“Comcast”)

- **January 10, 2008 letter requested interconnection pursuant to sections 251 and 252 for Comcast “Digital Voice” service:**
 - Direct network connections, number portability, reciprocal compensation, access to directory listings and directory assistance, and switch upgrade in rate centers where VTel lacks number portability capability
- **Comcast Digital Voice is a VoIP service.**
- **Comcast holds a CLEC certificate granted by the Vermont Public Service Board to provide telecommunications service, but has disclaimed any intention of providing “telecommunications services” in both FCC and Vermont proceedings**
- **Comcast already completes calls in VTel's service area using a Section 251(a) indirect interconnection with VTel's facilities.**

III. Clarification is appropriate to terminate a controversy or remove uncertainty:

- Should VTel enter into a commercial agreement or a Section 251 agreement for a direct interconnection with VOIP providers like Comcast?
- What is the proper compensation arrangement for such a direct interconnection agreement with a VOIP provider?
- Competition in rural Vermont must be fair in order to preserve high-quality, affordable telephone service.
- **Threshold question: Is VoIP service a telecommunications service?**
 - The FCC has not classified VoIP as a “telecommunications service” or VoIP providers as “telecommunications carriers”.
 - VOIP providers should not receive the rights of "telecommunications carriers" without assuming the corresponding responsibilities, such as content neutrality, non-discrimination, no slamming, payment of telecommunications taxes, payment of pole attachment fees, continuous emergency access, and porting Comcast telephone numbers to VTel.

- The Act appears to allocate the final authority for the determination of this important national policy matter to the FCC.
- **Section 251 of the Act requires provisions in an interconnection agreement that may not be required by a LEC's commercial agreement.**

The Section 251 contract provisions only apply to "telecommunications carriers." LECs must —

- Directly interconnect at any technically feasible point with the facilities and equipment of “any requesting telecommunications carrier”;
- Provide dialing parity to “competing providers of telephone exchange service and telephone toll service”;
- Provide access to pole attachments to “competing providers of telecommunications services”; and
- Establish reciprocal compensation arrangements for “transport and termination of telecommunications traffic between LECs and other telecommunications carriers”.
- **Similarly, the FCC has stated — and its rules reflect — that the obligations of sections 251 and 252 are triggered by the provision of a “telecommunications service”.**
 - 47 C.F.R. § 51.100(b) clarifies that a telecommunications carrier may also offer information services, but must offer “telecommunications services” through the interconnection arrangement.
 - 47 C.F.R. §§ 51.205, 217 limits the class of entities entitled to these benefits to entities providing telephone exchange or telephone toll service.
 - 47 C.F.R. § 51.701(a) governing reciprocal compensation applies to transport and termination of telecommunications traffic between LECs and other telecommunications carriers.

IV. Unclear whether Comcast is a telecommunications carrier that should have a Section 251 interconnection agreement or a commercial agreement with VTel.

- **Comcast has frequently disclaimed “telecommunications carrier” status —**
 - In comments filed in WC Docket No. 07-52, Comcast disclaimed common carrier status and the applicability to Comcast of statutory and rule provisions governing carriers
 - In an ex parte letter to the Chairman dated March 11, 2008, Comcast disclaimed carrier status and the FCC’s authority to regulate Comcast as a telecommunications carrier

- In a proceeding before the Vermont Public Service Board, Comcast appears to have denied being a telephone company for purposes of compensating a utility for pole attachments

- **— but holds a CLEC certificate in Vermont**

The Vermont CLEC certificate is not necessarily a sufficient indication that Comcast is, in fact, providing a “telecommunications service”

- Comcast affiliates have requested FCC authority to discontinue CLEC operations in at least 17 states
- Customer notices attached to the discontinuance applications indicate that Comcast will continue to provide its Digital Voice services in most, if not all, “discontinued” areas on an unregulated basis
- VTel has seen no evidence that Comcast is terminating its interconnection arrangements in those areas where it plans to discontinue its purported “telecommunications” offerings or that Comcast is otherwise relinquishing the benefits of its “carrier” status

- **Comcast’s activities appear to be regulatory arbitrage**

V. The FCC should clarify what entities are, and are not, subject to the benefits and responsibilities imposed by section 251 of the Act

- **Comcast’s seemingly contradictory behaviors make it difficult for VTel to clearly understand how it should fulfill its own obligations under all FCC and Vermont requirements, and to also fully serve its own customers**
- **Entities using technology other than VoIP to offer voice services are not permitted by the FCC to “cherry pick” their regulatory status**
- **Allowing entities to engage in such regulatory arbitrage undermines the goal of competitive neutrality and avoiding harm to the public and universal service in rural areas that may result from unfair competition**

VI. The Public Interest is Served by Fair Competition in the Provision of Video Service As Well As Telephone Service

- **VTel’s Petition and a la carte programming have a common concern of ensuring fair competition.** Just as there should be fair competition in the provision of telephone service, there should also be fair competition in the provision of video services
 - New entrants in the market for video services, such as VTel, require access to affordable programming through a la carte pricing. The availability of a la carte programming is critical to VTel's ability to

compete with Comcast. Without it, VTel faces a substantial barrier to entry because it will be forced to incur costs that are much higher than what Comcast itself pays for the same programming. Without the ability to buy and sell programming on a la carte basis, VTel anticipates it will only be able to provide video services at a substantial loss.

- It is not just that programmers require you to take ALL of their channels if a customer wants one of them. The bundle of channels must also be included in VTel's most widely subscribed video package. If only one subscriber wants only a single specific channel, the programmer requires nearly all of VTel's subscribers to take that programmer's entire line-up and VTel has to pay fees for that bundle for every customer.
 - VTel believes that new entrants should be allowed to purchase and sell to their customers only the programming they want.
 - VTel believe within 15 years, globally, hundreds of millions of consumers will use GigE and faster, via wired and wireless, to access any voice, video and data services they select, from multiple providers without mandatory bundles. We want that in Vermont.
- **VTel supports FCC and Vermont policies that enhance fair competition in the voice, video and other services markets because only fair competition will spur the availability of high quality, innovative and competitively priced service offerings throughout rural America.**